

APPEAL NO. 041610
FILED AUGUST 20, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 3, 2004. The CCH had originally been set for December 10, 2003, but because no ombudsman was available was reset for March 4, 2004. The appellant (claimant) did not appear at that time and the hearing officer sent the claimant a "10 day notice" letter. When there was no response from the claimant the hearing officer issued his decision. The hearing officer determined that there was no workers' compensation insurance coverage for the claimant on _____ (the date of the claimed injury), and that the claimant did not have disability.

The claimant appealed, contending that the hearing officer's decision was sent to the wrong address and that he sustained a compensable injury and should receive benefits. The respondent (carrier) responds, urging affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) do show that the hearing officer's decision was initially sent to the wrong address. The decision and order was remailed on April 1, 2004, and the claimant states in his appeal that he received the hearing officer's decision and order on April 6, 2004.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) (formerly Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

Records of the Commission indicate that the hearing officer's decision was mailed to the claimant's correct address on April 1, 2004. Both the claimant's appeal and the deemed receipt provisions of Rule 102.5(d) determine that the claimant received the hearing officer's decision on April 6, 2004. Applying the provisions of Section 410.202(a) (see above) and Rule 143.3(e), the appeal needed to be mailed or

filed no later than April 28, 2004. The claimant's appeal is post marked July 1, 2004, and was received by the Commission on July 6, 2004. The appeal, having been mailed after April 28, 2004, was therefore not timely.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision is final pursuant to Section 410.169.

The true corporate name of the insurance carrier is **BROWN AND BROWN INSURANCE SERVICE OF TEXAS, INC.**, and the name and address of its registered agent for service of process is

**CT CORPORATE SERVICE
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge